

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CARNETH LIPKE,

Plaintiff,

ORDER

v.

O6-C-0675-C

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

Before the court is a motion plaintiff has styled as a “Motion to Amend the Administrative Record.” Plaintiff avers that the administrative record compiled by the commissioner is missing two exhibits that were submitted to the Appeals Council by plaintiff in connection with his request for Appeals Council review: 1) a yoga brochure; and 2) a tree removal contract. Plaintiff says these documents are important because they show that the ALJ overstated the significance of plaintiff’s yoga and alleged tree removal activities in arriving at his credibility finding, although plaintiff acknowledges that neither of these exhibits was before the ALJ at the time he rendered his decision. Plaintiff asks the court not only to amend the administrative record, but also to include the missing exhibits “in a consideration of the evidence.”

A more appropriate title for plaintiff’s motion would be “Motion to Ignore Controlling Seventh Circuit Case Law,” namely, *Eads v. Sec’y of Dep’t of Health and Human*

Services, 983 F.2d 815 (7th Cir. 1993). In that case, the court made clear that when, as in this case, the Appeals Council has refused to review a case, the court is not free to review new evidence that was submitted to the Appeals Council but was not before the ALJ. *Id.*, at 817. “The correctness of [the ALJ’s] decision depends on the evidence that was before him.” *Id.* Plaintiff has not suggested that *Eads* is no longer good law nor offered any arguments why it might not apply in this case. And he has disavowed any claim that the documents constitute new and material evidence that might warrant a remand under sentence six of § 405(g). *Id.* Under these circumstances, plaintiff’s request that this court consider and rely on the missing exhibits was frivolous and a waste of the court’s time.

Because it is plain that plaintiff’s motion is a disguised attempt to broaden the scope of the evidence properly before the court and not merely a concern with the completeness of the record, the motion is DENIED.

Entered this 19th day of March, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER

Magistrate Judge